

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

T. Terrell Bryan,)	C.A. No. 4:08-3556-TLW
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
SCDC, IGC, D. Tatarsky, Ofc. Buehler,)	
et al, all in,)	
)	
Defendants.)	
_____)	

This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Thomas E. Rogers, III, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Magistrate Judge Rogers recommends that this action be dismissed without prejudice and without issuance and service of process. (Doc. # 8). Petitioner has filed objections to the Report. (Doc. # 11). Petitioner has also filed a motion for protection and return. (Doc. # 13).

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto. The Court declines to accept the Report at this time. In his filings, the petitioner indicates that his complaint is not incomplete, but that instead the end of the complaint is mixed in the 49 pages of exhibits. After review, this Court does note that what appears to be a second page of plaintiff's complaint is attached as page 34 of his initial filing. It purports to set forth causes of action and a request for relief. Out of an abundance of caution, and because the Court is not certain that the Magistrate Judge had the benefit of reviewing this second page in preparing his Report, this Court finds that is appropriate to remand this case to the Magistrate Judge for further review.

THEREFORE, IT IS HEREBY ORDERED that this case is **REMANDED** to the Magistrate Judge for further review.

IT IS SO ORDERED.

s/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

December 12, 2008
Florence, South Carolina